

## **REMARKS**

1. Reconsideration of the application in view of the above amendments and the following remarks is respectfully requested. Claims 1, 2, 7, 11-15, 21, 23-26, 31, 33, 35-39, 45-95, 97, 99, 120, 123 and 139-170 are pending in the application, with the remainder of the claims being cancelled. New Claims 170-179 have been added, the new claims consistent with the restriction requirement issued earlier for this application. Claims 2, 21, 23, 26, 45-95, 97, 99, 120, 123 and 139-170 are withdrawn from consideration. Claims 1, 7, 11-15, 24, 25, 31, 33 and 35-39 are rejected. Claim 1 is rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. Claims 1, 7, 11-13, 15, 24, 25, 31, 33, 35-37 and 39 are rejected as obvious under 35 U.S.C. § 103(a) over U.S. Pat. 6,571,200 to James Mault (Mault”) in view of U.S. Pat No. 5,701,894 to Isaac Cherry et al. (“Cherry”). Claims 14 and 38 are rejected as obvious in view of Mault and Cherry and further in view of U.S. Pat. No. 5,839,901 to Kip Karkanen (Karkanen”).

2. Claim 1 is rejected under 35 U.S.C. § 101 as being drawn to non-statutory subject matter. The Office Action states that Claim 1, with the phrase, “a sensor generating a sensor output signal” is non-statutory as being drawn to both an apparatus and a method. Applicants traverse the rejection. A sensor is still a sensor, this particular sensor also including a functional limitation that it generates a sensor output signal. Functional limits are perfectly proper in patent claims. Functional elements must be evaluated and considered, just like any other element of the claim, for what they fairly convey to a person of ordinary skill in the pertinent art in the context in which it is used. In particular, the M.P.E.P. states that a functional limitation is often used in association with an element “to define a particular capability or purpose that is served by the recited element.” M.P.E.P. 2173.05(g).

Nevertheless, Applicants have amended Claim 1 in a non-narrowing manner to expedite prosecution of the present application. The Examiner is requested to enter the Amendment and to withdraw the rejection under 35 U.S.C. § 101.

3. Claims 1, 7, 11-13, 15, 24, 25, 31, 33, 35-37 and 39 are rejected as obvious under 35 U.S.C. § 103(a) over U.S. Pat. 6,571,200 to James Mault (Mault”) in view of U.S. Pat No.

5,701,894 to Isaac Cherry et al. (“Cherry”). The rejection states that Mault teaches most elements of claim 1, except for a GSR sensor, which Cherry teaches. Applicants traverse the rejection.

The Office Action admits that Mault does not teach either a sensor generating data indicative of the rate of heat flowing off the individual’s body or a sensor for generating a sensor output signal indicative of a resistance to an individual’s skin to an electric current. Office Action, p. 4, lines 11-15. The Office Action then cites Mault cols. 3-5 as teaching automatically determining a context of the individual, Office Action, p. 4, lines 16-19, wherein the processor utilizes the context to predict the energy expenditure of the individual, citing ols. 3-6 and Fig. 2. Applicants traverse the rejection.

The presently claimed embodiments are to a particular sensor(s). As stated in the claim, the processor must be connected to at least one of a sensor for generating a sensor output signal comprising data indicative of a rate of heat flowing off said individual’s body, and a sensor for generating a sensor output signal comprising data indicative of a resistance of said individual’s skin to an electric current. The sensor output signals are to be directed to an electronic communication link with the processor. Cherry teaches a galvanic skin response sensor (GSR). This sensor is described in the passage cited as connected to a remote memory module (RMM), and not to a processor, as required in the claim. Mault teaches two measurements, a caloric expenditure rate detector for detecting and measuring the caloric expenditure rate of a subject, and also a body activity detector, for detecting and measuring the body activity of the subject. Mault, col. 3, lines 5-22.

Mault then uses the body activity detector to produce a body activity measurement and also retrieves a corresponding caloric expenditure rate measurement as the measurement of the caloric expenditure rate in monitoring the caloric measurement of the subject. Mault, col. 3, lines 5-15. Later, Mault uses these measurements to continuously monitor the caloric expenditure rate of a the subject using body activity detection alone, i.e., via a pedometer, an accelerometer, and/or a heart rate monitor. Mault, col. 6, line 65 to col. 7, line 1.

The present application uses a processor with certain algorithms to take the sensor data and determine a context of the individual. As noted in the application as filed, p. 121, line 8 to p. 122, lines 12 (para. [0241] as published), the context detectors may include a naïve Bayesian classifier to determine whether the individual is active or at rest. The context detector may also

include a linear regression. Neither Mault nor Cherry teaches such algorithms in determining a context. In addition, neither Mault nor Cherry teaches the use of a heat flux sensor as recited in amended Claim 1, amended Claim 25 or new independent Claim 170. Moreover, new independent Claim 170 requires both a sensor indicative of heat flow from an individual's body and a sensor indicative of resistance to electric current of the individual's skin.

Accordingly, Applicants submit that independent Claims 1, 25 and 170 are allowable, as are dependent Claims 7, 11-15, 24, 31, 33, 35-39 and 171-179.

4. Claims 14 and 38 are rejected as obvious in view of Mault and Cherry and further in view of U.S. Pat. No. 5,839,901 to Kip Karkanen (Karkanen"). Claims 14 and 38 are allowable at least because they depend from allowable Claims 1 and 25. The Examiner is respectfully requested to withdraw the obviousness rejections for Claims 14 and 38.

5. Reconsideration is requested at an early date. To the extent further discussion would be useful in the Examiner's review, the Examiner is invited to contact Applicants' attorney at the number given below.

The Commissioner is hereby authorized to charge any fees to Deposit Account No. 50-3912 in order to have this amendment considered.

Respectfully submitted,

ERIC TELLER ET AL.

By their Representatives,

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